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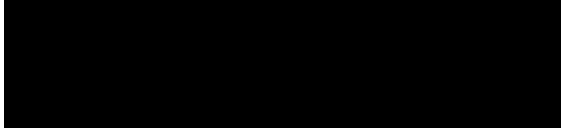
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



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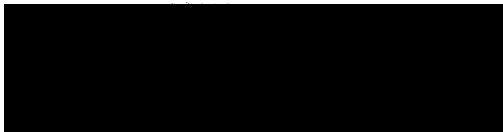
FILE: LIN 00 237 52029 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



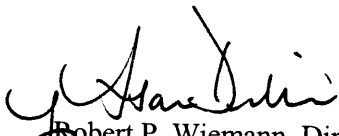
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Based upon information received by the U.S. Consulate in Chennai, India, the director served the petitioner a Notice of Intent to Revoke, and ultimately revoked the approval on October 1, 2002. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an executive recruitment firm that seeks to employ the beneficiary as a programmer analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director approved the petition in a decision dated October 26, 2000. The U.S. Consulate in Chennai, India found information which appeared to cast doubt on the bona fides of the beneficiary's claimed prior work experience; hence, the director issued the petitioner a notice of intent to revoke the approval on April 11, 2002. The petitioner responded to that notice in a timely manner, but the director found that the petitioner did not overcome the reasons for revocation. On October 1, 2002 the director revoked the approval of the petitioner. On appeal, the petitioner submits a brief and other documentation.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's letter of intent to revoke; (5) the petitioner's response to the letter of intent to revoke; (6) the

director's revocation of the approval; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. The petitioner indicated that it wished to hire the beneficiary because he possessed a bachelor's degree in engineering followed by a one-year computer applications course, and, therefore, the beneficiary has education which has been determined to be the equivalent of a U.S. bachelor's degree in engineering with coursework in computer science. The petitioner requires a baccalaureate degree or its equivalent in engineering, computer science, or a related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. The director apparently found the proffered position to qualify as a specialty occupation. The director, guided by information from the U.S. Consulate, discounted the beneficiary's work experience, and focused on the fact that the beneficiary's Indian bachelor's degree was obtained in the field of engineering. On appeal, counsel states that the beneficiary is qualified for the position by virtue of his formal education alone, without including his work experience. Counsel points out that the academic evaluation from the Trustforte Corporation, which was submitted with the original petition, reflects the evaluator's inclusion of the beneficiary's year-long course in computer applications. The record also contains the petitioner's explanation for an apparent inconsistency in information regarding the beneficiary's past work experience.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. Counsel notes that according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, bachelor's degrees in a specific specialty are commonly required to enter the field of computer programming, in particular in the case of programmer analysts, whose duties go beyond simple data entry. The beneficiary's bachelor's degree in engineering with coursework in computer science is directly related to the duties of the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.